

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 12, 2007

\_\_\_\_\_  
No. 06-50900  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

PROCOPIO RAMIREZ-GOMEZ

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:05-CR-1129-ALL  
\_\_\_\_\_

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Procopio Ramirez-Gomez (Ramirez) raises arguments that he concedes are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202). Ramirez has served his term of incarceration and has been removed from the United States. Ramirez also raises arguments that he concedes are foreclosed by *United States v. Rosenbaum-*

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 06-50900

Alanis, 483 F.3d 381, 383 (5th Cir.), petition for cert. filed, (June 25, 2007) (No. 06-12082), which held that an appeal of a sentence is moot when the appellant has been removed and is barred from entering the United States. The Government's motion for summary affirmance is DENIED. The appeal is DISMISSED.